nation and that it ended in the final acquittal of the plaintiff. An allegation that an offence of which a justice of the peace had jurisdiction was dismissed by him "without the introduction of any testimony," or that the defendant, "without the introduction of any testimony," caused the plaintiff to be discharged and not prosecuted for said offence, is not such an averment of the final termination of the prosecution as will support an action for malicious prosecution. It amounts to no more than a *nolle prosequi*, which is no bar to a further prosecution for the same offence.

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KELLY v. LEHIGH MINING AND MANUFACTURING CO.—Decided at Wytheville, June 28, 1900.—*Buchanan*, J. Absent, *Riely*, J:

1. CHANCERY PRACTICE—*Delivery of title papers—Adequate remedy at law.* A court of equity has jurisdiction to decree the specific delivery of title papers to heirs at law, devisees and other persons properly entitled to the custody and possession of the same when they are wrongfully detained or withheld from them. This is an old and well-settled subject of equity jurisdiction, and is not affected by the fact that a statute gives the complainants a complete and adequate remedy by an action of detinue. In the absence of prohibitory or restrictive words in the statute, courts of equity still retain their jurisdiction in such cases.

2. MUNIMENTS OF TITLE—*Delivery—Common law rule—Rule in Virginia.* Although at common law a grantee of land was entitled to demand and have of his grantor all title deeds and muniments of title, and the same passed with the conveyance of the land without being mentioned in the deed, this common law rule is not in force in this State where the public records furnish evidence of title, and where copies therefrom, equally with the originals, are admissible in evidence, and hence the grantee is not entitled, as a matter of law, to demand of his grantor the original muniments of title.

3. CONTINUANCE—*Discretion.* A motion for a continuance is addressed to the sound judicial discretion of the trial court under all the circumstances of the particular case, and its action will not be reversed unless plainly erroneous.

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MAX MEADOWS LAND AND IMPROVEMENT CO. v. MCGAVOCK AND OTHERS.—Decided at Wytheville, June 28, 1900.—*Buchanan*, J. Absent, *Riely* and *Harrison*, JJ:

1. CHANCERY PLEADING AND PRACTICE—*Case in judgment—Lien on purchase price—How enforced—Irregular proceedings—Correct results.* Several joint owners of a tract of land sold and conveyed it to a purchaser, reserving a vendor's lien for balance of purchase money. Default having been made, they instituted suit for specific performance of the contract. At this stage of the proceedings two of the vendors assigned and transferred to a trustee all their right and interest in the unpaid purchase money for said land in trust to secure the payment of a debt, providing further in the deed that "if said contract is not specifically enforced by the court" then they "convey their interest in said land to the party of the second part." The contract was specifically enforced, the land sold in the suit brought for that purpose, and at such sale the original vendors became the purchasers. They paid no cash payment, but gave bonds without security for de-

ferred payments. The court confirmed the sale, reciting that other suits were pending to subject the lands in the hands of the vendors, and that when sales were made in these suits the court would provide for payment of costs of suit and sale out of the funds then received. Accounts of liens had already been taken in these suits, and a sale was subsequently made, and, after providing for said costs, the court decreed the balance of the purchase money arising from the interests of the two vendors aforesaid to the trust creditor aforesaid.

*Held:* The trial court should have ordered the sale of the interests of the said two vendors for the purchase money due by them, and so much of the proceeds of that sale as was equal to the purchase money due from them should have been appropriated to the payment of the trust creditor, but as what was actually done by the trial court accomplished substantially the same result, without serious prejudice to other creditors, its decree will not be reversed.

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SMITH'S EXECUTOR v. POWELL, TRUSTEE, AND OTHERS.—Decided at Wytheville, July 5, 1900.—*Keith*, P. Absent, *Riely*, J :

1. CHANCERY PLEADING AND PRACTICE—*Final decree—Subsequent decrees.* After a final decree has been entered in a cause, no further decree can be regularly entered therein.

2. ATTORNEYS TO COLLECT—*Authority—Acceptance of note — Ratification.* An attorney simply to collect a debt has no authority to receive anything but money for it, and if he accepts a note for it, no subsequent dealings of his with reference to the note, without previous authority or subsequent ratification of the client, can be deemed a ratification by the client.

3. ESTOPPEL.—It is of the essence of an estoppel that the act relied upon as such should have been injurious and prejudicial to him who relies upon it as an estoppel.

4. APPEAL AND ERROR—*Decree by default—Section 3451 Code—Finality.* This court has no jurisdiction of an appeal from a decree by default until relief has been sought under section 3451 of the Code by motion to the court in which the decree was rendered. When the time allowed by this section has expired, the decree is final and irreversible.

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CARPER v. MARSHALL.—Decided at Wytheville, July 5, 1900.—*Keith*, P. Absent, *Riely*, J :

1. SPECIFIC PERFORMANCE—*Judgments against vendor—Provision for payment.* In a suit to enforce a vendor's lien it is not error to direct a sale and provide that judgments against the vendor amounting to only a small proportion of the amount due him shall be paid out of the cash payment at the sale, although the contract for the sale stipulated that the purchase money notes should not be assigned until said judgments had been satisfied. The provisions for paying the judgments amply protect the vendee.

2. VENDOR AND VENDEE—*Vendor's lien—Change in evidence of debt—Case in judgment—Findings in trial court—Appeal and error.* A vendor of land who retains a lien for the purchase price may surrender to the vendee his bond for such purchase price and accept the bond of another for the amount, and at the same